

AMENDED IN SENATE APRIL 9, 2007

SENATE BILL

No. 1033

Introduced by Senator ~~Negrete McLeod~~ Runner
(Coauthor: Senator Negrete McLeod)

February 23, 2007

An act to add Section 1203.42 to the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

SB 1033, as amended, ~~Negrete McLeod~~ *Runner*. Criminal procedure: *peace officers*: expungement.

Existing law provides that conviction for certain misdemeanors imposes a prohibition for 10 years against possession of a firearm, as specified. Existing law provides a petition process for peace officers convicted of certain of these offenses involving domestic violence that allows a one-time exemption from that prohibition, as specified. Federal law imposes a prohibition against possession of a firearm by a person who has been convicted of a domestic violence offense, unless the offense has been expunged from the person's record.

This bill would require expungement of the conviction for those peace officers who ~~suffer a conviction~~ *are convicted* of the relevant offenses prior to January 1, 2007, and who have complied with the provisions authorizing a one-time exemption from the firearm possession prohibition *and the conditions of probation, as specified*. The bill would *also* authorize peace officers who ~~suffer convictions for~~ *are convicted of any of the predicate offenses on or after January 1, 2007, to petition the court for expungement of the conviction* *be permitted to withdraw his or her guilty plea or nolo contendere*, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1203.42 is added to the Penal Code, to read:

~~1203.42.— (a) In any case in which any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.35 whose employment or livelihood is dependent on the ability to legally possess a firearm, who has been convicted, prior to January 1, 2007, of a misdemeanor under Section 273.5, 273.6, or 646.9, who petitioned the court pursuant to subdivision (c) of Section 12021 and whose petition was granted, and who has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, then after the termination of the period of probation, or, if the defendant was not granted probation, then after the lapse of one year from the date of the pronouncement of judgment, the court shall expunge from the defendant's record that~~

1203.42. (a) (1) A court shall expunge from a defendant's record a conviction, and the defendant shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, provided however, that in any subsequent prosecution of the defendant if all of the following are true of the defendant:

(A) He or she is employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.35 whose employment or livelihood is dependent on the ability to legally possess a firearm.

(B) He or she was convicted, prior to January 1, 2007, of a misdemeanor under Section 273.5, 273.6, or 646.9.

(C) He or she petitioned the court pursuant to paragraph (2) of subdivision (c) of Section 12021, which petition was granted.

(D) He or she fulfilled the conditions of probation for the entire period of probation, or, if discharged prior to the termination of the probation period, then if the probation period has ended, or, if not granted probation, then if one year has passed since the date of the pronouncement of judgment.

(2) *However, if the defendant is subsequently prosecuted for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed, and further provided that in which case the expungement order shall state, and the defendant shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery.*

~~(b) In any case in which any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.35 whose employment or livelihood is dependent on the ability to legally possess a firearm, who has been convicted, on or after January 1, 2007, of a misdemeanor under Section 273.5, 273.6, or 646.9, who petitioned the court pursuant to subdivision (c) of Section 12021 and whose petition was granted, and who has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, then after the termination of the period of probation, or, if the defendant was not granted probation, then after the lapse of one year from the date of the pronouncement of judgment, the defendant~~

(b) A defendant who meets all of the conditions in paragraph (1) of subdivision (a) shall be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation

1 or information dismissed. The order shall state, and the probationer
2 shall be informed, that the order does not relieve him or her of the
3 obligation to disclose the conviction in response to any direct
4 question contained in any questionnaire or application for public
5 office, for licensure by any state or local agency, or for contracting
6 with the California State Lottery.

7 (c) A person who petitions for a change of plea or setting aside
8 of a verdict under subdivision (b) may be required to reimburse
9 the court for the actual cost of services rendered, whether or not
10 the petition is granted and the records are sealed or expunged, at
11 a rate to be determined by the court not to exceed one hundred
12 twenty dollars (\$120), and to reimburse the county for the actual
13 cost of services rendered, whether or not the petition is granted
14 and the records are sealed or expunged, at a rate to be determined
15 by the county board of supervisors not to exceed one hundred
16 twenty dollars (\$120), and to reimburse any city for the actual cost
17 of services rendered, whether or not the petition is granted and the
18 records are sealed or expunged, at a rate to be determined by the
19 city council not to exceed one hundred twenty dollars (\$120).
20 Ability to make this reimbursement shall be determined by the
21 court using the standards set forth in paragraph (2) of subdivision
22 (g) of Section 987.8 and shall not be a prerequisite to a person's
23 eligibility under this section. The court may order reimbursement
24 in any case in which the petitioner appears to have the ability to
25 pay, without undue hardship, all or any portion of the cost for
26 services established pursuant to this subdivision.